

BEFORE THE
POLLUTION CONTROL HEARINGS BOARD
STATE OF WASHINGTON

IN THE MATTER OF
CLARK COUNTY HOME
BUILDERS' ASSOCIATION,

Appellant,

v.

SOUTHWEST AIR POLLUTION
CONTROL AUTHORITY,

Respondent.

PCHB No. 79-34

FINAL FINDINGS OF FACT,
CONCLUSIONS OF LAW
AND ORDER

THIS MATTER being an appeal of a \$50 civil penalty for an outdoor fire; having come on regularly for formal hearing before the Pollution Control Hearings Board on the 31st day of May, 1979, at Longview, Washington; and appellant, Clark County Home Builders' Association, appearing by its Executive Vice President, Steven K. Bee, and respondent, Southwest Air Pollution Control Authority, appearing through its attorney, James D. Ladley, with William A. Harrison, hearing examiner presiding, and the Board having considered the exhibits, records and files herein and having reviewed the Proposed Findings of Fact, Conclusions of Law and

WAH/LB

1 Order of the presiding officer mailed to the parties on the 4th day of
2 June, 1979, and more than twenty days having elapsed from said service,
3 and

4 The Board having received no exceptions to said Proposed Findings
5 of Fact, Conclusions of Law and Order and the Board being fully advised
6 in the premises, now therefore,

7 IT IS HEREBY ORDERED, ADJUDGED AND DECREED that said Proposed
8 Findings of Fact, Conclusions of Law and Order dated the 4th day of June,
9 1979, and incorporated by reference herein and attached hereto as
10 Exhibit A, are adopted and hereby entered as the Board's Final Findings
11 of Fact, Conclusions of Law and Order herein.

12 DONE at Lacey, Washington this 5^d day of July, 1979.

13 POLLUTION CONTROL HEARINGS BOARD

14 
15 DAVID AKANA, Member

16 
17 CHRIS SMITH, Member

18

19

20

21

22

23

24

25

26 FINAL FINDINGS OF FACT,
27 CONCLUSIONS OF LAW
AND ORDER

CERTIFICATION OF MAILING

I, LaRene Barlin, certify that I mailed, postage prepaid, copies of the foregoing document on the 6th day of July, 1979, to each of the following parties at the last known post office addresses, with the proer postage affixed to the respective envelopes.

Mr. Steven K. Bee
Executive Vice President
Clark County Home Builders' Association
1715 Broadway
Vancouver, Washington 98663

Mr. James D. Ladley
Attorney at Law
P.O. Box 938
Vancouver, Washington 98666

Southwest Air Pollution Control Authority
7601-H Northeast Hazel Dell Avenue
Vancouver, Washington 98665


LARENE BARLIN, Administrative Assistant
POLLUTION CONTROL HEARINGS BOARD

FINAL FINDINGS OF FACT,
CONCLUSIONS OF LAW
AND ORDER

BEFORE THE
POLLUTION CONTROL HEARINGS BOARD
STATE OF WASHINGTON

IN THE MATTER OF
CLARK COUNTY HOME
BUILDERS' ASSOC.

Appellant,

v.

SOUTHWEST AIR POLLUTION
CONTROL AUTHORITY

Respondent.

PCHB No. 79-34

FINDING OF FACT,
CONCLUSIONS OF LAW,
AND ORDER

This matter, the appeal of a \$50 civil penalty for an outdoor fire allegedly in violation of Section 4.01 of respondent's Regulation I came on for hearing before the Pollution Control Hearings Board, William A. Harrison, Hearing Examiner, presiding alone, in Longview, Washington on May 31, 1979.

Appellant appeared by its Executive Vice President, Steven F. Bee. Respondent was represented by its attorney, James D. Ladley. Reporter Betty Koharski recorded the proceedings.

Witnesses were sworn and testified. Exhibits were admitted.

1 From testimony heard and exhibits examined, the Pollution Control
2 Hearings Board makes these:

3 FINDING OF FACT

4 Appellant, Clark County Home Builders' Association, is a non-profit
5 trade association. It owns certain lots upon which its builder members
6 construct homes, the house and lot then being sold and the gain donated
7 to charity.

8 Appellant owned 26 lots known as "Lewis and Clark Woods III",
9 of which its members built upon 14 lots. During the period of September
10 28 to October 8, 1978, a "Parade of Homes" promotion was held during
11 which the homes were shown for sale. One of these houses, designated
12 the "Boy Scout" house was promoted in leaflets distributed at the site.
13 The lot of this Boy Scout house was owned by appellant, the home by one
14 of its builder members. The lot and home were purchased and the \$10,000
15 gain then donated to the Boy Scouts of America.

16 II

17 Several vacant lots remained unsold and in the ownership of
18 appellant after the Parade of Homes, including the vacant lot next
19 to the Boy Scout house. Consequently, these lots were auctioned to
20 appellant's builder members. Appellant accepted a bid on the lot
21 next to the Boy Scout house on or about November 1, 1978.

22 III

23 On November 17, 1978, respondent's inspector observed an outdoor
24
25

26 FINDING OF FACT,
27 CONCLUSIONS OF LAW,
AND ORDER

1 fire some 4 feet in diameter on the vacant lot next to the Boy Scout
2 house. It contained tin cans, an aerosol paint can and promotional
3 leaflets for the Boy Scout house.

4 Appellant owned the lot upon which the fire occurred at the time
5 of its occurrence. Appellant's only witness testified that he did not
6 know who started the fire. No permit for the fire had been issued by
7 respondent nor had one been applied for.

8 On November 21, 1978, appellant executed a deed to the subject
9 lot granting it to the member whose bid had been accepted.

10 IV

11 Any Conclusion of Law hereinafter stated which may be deemed a
12 Finding of Fact is hereby adopted as such.

13 CONCLUSIONS OF LAW

14 I

15 Respondent, pursuant to RCW 43.21B.260, has filed with this
16 Board a certified copy of its Regulation I containing respondent's
17 regulations and amendments thereto of which official notice is taken.

18 II

19 The outdoor fire violated Section 4.01(b) of respondent's
20 Regulation I in that no permit was applied for nor obtained from
21 respondent.

22 III

23 Section 4.01(d) of respondent's Regulation I states that:
24
25

26 FINDING OF FACT,
27 CONCLUSIONS OF LAW,
AND ORDER

(
:
1 (d) It shall be (prima facia) evidence that the person
2 who owns or control property on which an open fire, prohibited
3 by this regulation, occurs has caused or allowed said open fire.

4 Appellant has failed to rebut this presumption. We therefore conclud
5 that it violated Section 4.01 of respondent's Regulation I by causing or
6 allowing an outdoor fire without a permit from respondent.

7 IV

8 Section 2.10 of respondent's Regulation I provides for a civil
9 penalty up to \$250 for each violation of a provision of Regulation I.
10 The \$50 civil penalty assessed by respondent is reasonable on the facts
11 of this case.

12 V


13 Any Finding of Fact which should be deemed a Conclusion of Law
14 is hereby adopted as such.

15 ORDER

16 The \$50 civil penalty is hereby affirmed.

17 DONE at Lacey, Washington, this 4th day of June, 1979.

18 POLLUTION CONTROL HEARINGS BOARD

19 
20 WILLIAM A. HARRISON,
21 Presiding Officer
22
23
24
25
26

27 FINDING OF FACT,
CONCLUSIONS OF LAW,
AND ORDER